

48A C.J.S. Judges § 335

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

E. Effect of Disqualification of Judge

§ 335. Generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  56

The disqualification of a judge generally deprives the judge of authority to act in connection with the pending cause except to select another judge or to make a transfer of the case in accordance with the law.

Until a judge has recused himself or herself, the judge has full power and authority to act in the cause.¹ Accordingly, until the fact of disqualification is established in the manner provided by law, the judge may not surrender jurisdiction² and is not disqualified from acting in the case.³ However, when that is done, the judge loses jurisdiction,⁴ and thereafter the judge is without authority to determine the cause or hear any matter affecting substantive rights of the parties.⁵ The judge may not act further in any judicial capacity in connection with the action or proceeding in question⁶ except to make the proper transfer of the case⁷ or take the appropriate steps for the selection of another judge.⁸ In this connection, a disqualified judge has no authority to choose a substitute judge.⁹

It follows that where, under statute, the filing of a proper affidavit of bias and prejudice conclusively establishes the right to a change of judge, on submission of such an affidavit, the judge has no jurisdiction to do other than transfer the matter to another judge¹⁰ except for instances outlined in the statute¹¹ or except under extraordinary circumstances.¹² The filing of an affidavit of bias and prejudice against the trial judge after the issuance of a temporary restraining order without notice, too late to permit substitution of another judge within the life of the restraining order, justifies the extension by the judge of such order.¹³

A decree rendered by a disqualified judge cannot be avoided by a successor if the successor is likewise disqualified.¹⁴ The disqualification of the regular judge does not affect the qualification of another judge with whom he or she temporarily exchanges circuits by agreement in accordance with constitutional authority.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Having recused himself from a case, a judge has no more authority to take action in that case than does the ordinary citizen on the street. [Barnes v. Jefferson Davis County School Dist.](#), 160 So. 3d 1149 (Miss. 2015).

Father's motion for substitution of judge could not be used to avoid consolidation of his complaint seeking to set aside order granting mother's petition for name change with petition and to allow him to relitigate petition, in violation of doctrine of res judicata. MCA 3–1–804; Rules Civ.Proc., Rules 42(a), 60(d). [Tucker v. Tucker](#), 2014 MT 115, 375 Mont. 24, 326 P.3d 413 (2014).

[END OF SUPPLEMENT]

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Footnotes

- 1 La.—[Revere v. Strain](#), 837 So. 2d 137 (La. Ct. App. 1st Cir. 2002).
- 2 Cal.—[In re Friedman's Estate](#), 171 Cal. 431, 153 P. 918 (1915).
- 3 Ga.—[Haire v. Cook](#), 237 Ga. 639, 229 S.E.2d 436 (1976).
- Ill.—[People v. Nickols](#), 41 Ill. App. 3d 974, 354 N.E.2d 474 (3d Dist. 1976).
- 4 Ark.—[Kelly v. Mississippi County Circuit Court](#), 374 Ark. 396, 288 S.W.3d 243 (2008).
- Colo.—[In re Estate of Beren](#), 2012 COA 203, 2012 WL 5871034 (Colo. App. 2012), as modified on denial of reh'g, (Feb. 14, 2013) and certiorari granted in part, 2013 WL 4807588 (Colo. 2013).
- Ind.—[A.T. v. G.T.](#), 960 N.E.2d 878 (Ind. Ct. App. 2012).
- Disqualification at common law as an irregularity not affecting jurisdiction, see § 339.
- Once proper application made**
In the face of a proper application for cause disqualification of judge, the judge lacks jurisdiction to proceed in the action in which his or her impartiality is questioned.
- Mo.—[Elnicki v. Caracci](#), 255 S.W.3d 44 (Mo. Ct. App. E.D. 2008).
- 5 Cal.—[Bollotin v. Stockton Savings and Loan Bank](#), 129 Cal. App. 2d 573, 277 P.2d 519 (2d Dist. 1954).
- Ind.—[Dowd v. Harmon](#), 229 Ind. 254, 96 N.E.2d 902 (1951).
- Ohio—[Tumbleson v. Noble](#), 109 Ohio App. 242, 10 Ohio Op. 2d 470, 164 N.E.2d 808 (2d Dist. Fayette County 1959).
- 6 Ill.—[People v. Antoine](#), 335 Ill. App. 3d 562, 269 Ill. Dec. 647, 781 N.E.2d 444 (1st Dist. 2002).
- La.—[Rainey v. Entergy Gulf States, Inc.](#), 35 So. 3d 215 (La. 2010).

Miss.—Mississippi Com'n on Judicial Performance v. Skinner, 119 So. 3d 294 (Miss. 2013).

7 U.S.—In re BellSouth Corp., 334 F.3d 941 (11th Cir. 2003).

Nev.—Turnipseed v. Truckee-Carson Irr. Dist., 116 Nev. 1024, 13 P.3d 395 (2000).

As to order transferring cause to another court, see § 332.

Proper to grant application for change of judge

Mo.—State ex rel. Manion v. Elliott, 305 S.W.3d 462 (Mo. 2010).

8 Idaho—State v. Beard, 135 Idaho 641, 22 P.3d 116 (Ct. App. 2001).

Ill.—People v. Saltzman, 342 Ill. App. 3d 929, 277 Ill. Dec. 567, 796 N.E.2d 653 (3d Dist. 2003).

Granting motion for automatic change of judge

Ind.—A.T. v. G.T., 960 N.E.2d 878 (Ind. Ct. App. 2012).

9 Ala.—Ex parte Jim Walter Homes, Inc., 776 So. 2d 76 (Ala. 2000).

Ark.—State v. George, 250 Ark. 968, 470 S.W.2d 593 (1971).

W. Va.—Stern Bros., Inc. v. McClure, 160 W. Va. 567, 236 S.E.2d 222 (1977).

10 Alaska—Hartford Acc. & Indem. Co. v. State for Use and Ben. of Consol. Const. Co., 498 P.2d 274 (Alaska 1972).

Colo.—People v. District Court In and For Third Judicial Dist., 192 Colo. 503, 560 P.2d 828 (1977).

Mo.—State ex rel. Musser v. Dahms, 458 S.W.2d 865 (Mo. Ct. App. 1970).

Assignment to several judges permissible

Ariz.—State v. Miranda, 3 Ariz. App. 550, 416 P.2d 444 (1966).

11 Mont.—Wheeler v. Moe, 163 Mont. 154, 515 P.2d 679 (1973).

Powers reserved by statute

The judge may exercise such other powers as are expressly reserved by the statutes to a disqualified judge.

Mont.—State ex rel. Moser v. District Court of Ninth Judicial Dist. in and for Pondera County, 116 Mont. 305, 151 P.2d 1002 (1944).

12 Ind.—State ex rel. Cornett v. Dearborn Circuit Court, 236 Ind. 294, 140 N.E.2d 101 (1957).

Ohio—Cuyahoga County Bd. of Mental Retardation v. Association of Cuyahoga County Teachers of Trainable Retarded, 47 Ohio App. 2d 28, 1 Ohio Op. 3d 168, 351 N.E.2d 777 (8th Dist. Cuyahoga County 1975).

13 U.S.—Benedict v. Seiberling, 17 F.2d 831 (N.D. Ohio 1926).

14 N.Y.—In re Hancock's Will, 91 N.Y. 284, 1883 WL 12519 (1883).

15 Ark.—Evans v. State, 58 Ark. 47, 22 S.W. 1026 (1893).